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January 28, 2020

VIA ECF

Hon. Katherine Polk Failla
United States District Judge
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: Commissions Import Export S.A. (“Petitioner”) v.
Republic of the Congo (“Republic”), et ano., 1:19-mc-00195-KPF

Dear Judge Failla:

We represent Petitioner and write to inform the Court of certain facts relevant to the January 24, 2020 letter to the Court from counsel to Ecree LLC (“Ecree”).

On December 16, 2019 (the same day the parties last appeared before the Court), the Board of Managers of Trump International Hotel & Tower Condominium (the “Trump Board of Managers”) commenced a foreclosure proceeding against Ecree in New York State Supreme Court, New York County, to foreclose on condominium unit 32G (the “Condo”) that is the subject of the proceedings before Your Honor. (Doc. No. 35, Exh. B.)

The Trump Board of Managers named as defendants Ecree and John Does 1-15, stated to include all persons “claiming an interest in the Condo,” including “judgment creditors;” but Petitioner was not named as a defendant though this case is a matter of public record. As there is apparently no mortgage on the Condo, all proceeds of the foreclosure, above \$57,000 in common charges claimed by the Board of Managers, would go to Ecree absent any other party’s claim. The Condo has been estimated to be worth \$7,000,000 (Doc. No. 1, Exh. 5).

Ecree was served by the Trump Board of Managers in the foreclosure proceeding through the New York Secretary of State in Albany on January 7, 2020.¹ Yet on January 3, 2020, four days *before* Ecree was served, the Republic submitted a copy of the foreclosure complaint in support of the Republic’s motion to vacate its default. (Doc. No. 35, Exh. B.)

¹ New York County Index No. 162142-2019, Doc. No. 3 (available on NY SCROLL). This is, of course, the same valid method of service used by Petitioner in this case, notwithstanding the off-point suggestions by the Republic’s counsel at the December 16 hearing.

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The undersigned as counsel for Petitioner filed a Notice of Appearance (attached) in the foreclosure proceeding on January 23, 2020, as “a party having an interest in the subject premises,” as referred to in the foreclosure complaint. On January 24, *the very next day*, counsel for Ecree submitted his letter to the Court, marking Ecree’s first appearance in this case despite it having been served through the Secretary of State on May 10, 2019 (Doc. No. 6) and having had the Clerk enter its default on August 26, 2019 (Doc. No. 11).

Petitioner respectfully submits that the timing of counsel’s appearance for Ecree – one day after Petitioner evidenced its intent to assert an interest in the foreclosure proceeding (in which it was not named) – is not coincidental. It is a fair inference that Ecree, the Republic’s fraudulent transferee, has been monitoring this case all along; chose to default; then hoped that the foreclosure would allow the Republic (*sub nom* Ecree) to extract the excess value of the Condo in cash otherwise claimed by a lawful judgment creditor, effectively depriving Your Honor, as a practical matter, of the ability to decide this matter. Ecree therefore appeared in this case only *after* Petitioner appeared in the foreclosure proceeding.

We ask that the Court consider these facts in connection with Ecree’s counsel’s letter.

Respectfully submitted,



Charles R. Jacob III

cc: All Counsel via ECF

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE BOARD OF MANAGERS OF TRUMP
INTERNATIONAL HOTEL & TOWER
CONDOMINIUM,

Plaintiff,

-against-

ECREE LLC, and "JOHN DOE" No. 1 through "JOHN
DOE" No. 15, the true name of said Defendants being
unknown to plaintiff, the parties intended to be those
persons having or claiming an interest in the mortgaged
premises described in the complaint by virtue of being
tenants, or occupants, or judgment-creditors, or lienors
of any type or nature in all or part of said premises,

Defendants.

Index No. 162142/2019

NOTICE OF APPEARANCE

PLEASE TAKE NOTICE that the undersigned, attorneys admitted to practice before this Court, hereby appear as counsel for Commissions Import Export S.A., a party having an interest in the subject premises (*see Commissions Import Export S.A. v. Republic of the Congo and Ecree LLC*, Case No. 1:19-mc-00195 (KPF), United States District Court for the Southern District of New York), in the above-captioned proceeding and request that all future notices and papers in this action be served upon the undersigned at the address below.

Dated: January 23, 2020

GOULSTON & STORRS PC

By:



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